IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 322 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANJALAVALA RAFIQ AHMED GULAM NABI

Versus

NAYANKUMAR BABULAL MISTRI

Appearance:

MR BB NAIK for Petitioner

MR R.J.Oza, for Respondent No. 1

Mr. I.M.Pandya, ASSTT. GOVERNMENT PLEADER for Respondent No. 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/01/2001

ORAL JUDGEMENT

This petition has been preferred for quashing the order dated 8th January, 1998 passed by the Deputy Secretary, Civil Supply Department, State of Gujarat, Gandhinagar, confirming the order dated 15th October, 1996/30.11.1996 passed by the respondent no.2

Collector, Himmatnagar and for maintaining the order dated 24th April, 1995 of the Competent Authority whereby the petitioner was authorised to open and run a fair price shop on the advertisement dated 3rd January, 1995 by the District Civil Supply Officer. Applications from the persons willing to have authorisation to run fair price shop in Polo ground, Himmatnagar were invited within a specified period. The respondent no.1 and nine other persons applied for authorisation to run the fair price shop. The Mamlatdar, Himmatnagar, after scrutinising the applications, submitted the same for consideration of the Himmatnagar Taluka Civil Supply and Consumer Protection Advisory Committee and that committee considered the proposals in its meeting held on 8th March, 1985. The Committee recommended the names of the respondent no.1 at serial no.1 and the name of Rafik Ahmed Gulam Nabi at serial no.2. The Mamlatdar submitted the report to the District Collector, Sabatkantha at Himmatnagar. The proposals were considered in the meeting of the District Civil Supply and Consumer Protection Advisory Committee in its meeting held on 5th April, 1995. The Advisory Committee recommended the first preference to the respondent no.1 and if he is not ready and willing to accept the same then the petitioner should be offered authorisation to run the fair price shop. After consideration, the recommendation of the Advisory Committee, the competent authority i.e. District Civil Supply Officer granted authorisation in favour of the petitioner by an order dated 24th April, 1995. The respondent preferred an appeal under section 11(1) of the Essential Commodities (Licence, Control and Supply) Order, 1981 before the Collector, Sabarkantha at Himmatnagar. The Collector, after going through the entire materiali on record, considered the proposal and recommendation of Taluka Supply Advisory Committee and the respondent was found to be a resident of local area belonging to Baxi Panch and he was considered to be an educated unemployed though being a SC graduate. Hence, the Committee recommended the name of the respondent no.1 for giving priority in the seniority for allotment of the shop. It was also considered that the respondent no.1 had chosen the place because of inheritence of the respondent and the same was not convenient for business purpose. Hence, upon such conclusion of the Member Secretary for treating this aspect in accordance with the provisions of the Government notification dated 2.1.95, ultimately, the members of the Committee have recommended to give the shop to the respondent. In case, the respondent does not accept or deny in that case, it was recommended that the shop be allotted to the petitioner.

2. The District Supply Officer had decided to give the shop to the petitioner only on the basis that the place shown by the present petitioner-Anjanwala is situated on the main road and the said place is more convenient to the customers. Except, respondent no.1 and the petitioner, other persons were not found to be suitable for this purpose. It was also considered by the Collector in appeal preferred by the respondent that the definition of the educated unemployed means that any person at least having qualification of SSC or other equivalent examination passed and not having any other occupation or having any other occupationor income, should not be aged more than 35 years. The respondent no.1 has a qualification of B.Sc. He was found to be aged about 27 years. Thus, he was not found more than prescribed age of 35 years. While on the other hand, the petitioner on the date of the publication of the notification was found aged 39 years. Hence, the petitioner was not falling within the category of educated unemployed. The comparative evaluation of the aspect of business place was also considered. The Mamlatdar, Himmatnagar had also visited the place of business proposed by the petitioner pursuant to his application dated 23rd March, 1995 and that shop was found in the shopping centre and the passage between the two front side shops was comparatively a small shop. But that shop was too small compared to the prescribed area. The Collector also considered the aspect of area, convenience of the business place and found that the conclusion reached by the District Supply Officer that the business place suggested by the respondent no.1 was not just and proper. From the spot inspection and report of the Mamlatdar, it was found that the petitioner was not having appropriate business place for the purpose. The respondent no.1 was found to be more experienced in the field and he was found to be a local resident.

3. On the basis of the material on record, the appellate authority found that the petitioner could not produce or lead any evidence to show that he was residing in the area at any earlier point of time. The material on record was considered and it was found that the petitioner was a local resident of Patanjali village which is at a distance of 22 kms. from Himmatnagar. While the candidate is required to be a resident of 10 Kms. radius area from the place of the shop. Thus, the petitioner was found not resident of 10 kms. radius area from the shop whereas the respondent no.1 was found to be a resident of Polo ground and the petitioner was not proved to be a local resident. Considering all these aspects, the order passed by the District Civil Supply

Officer, Sabarkantha in favour of the petitioner allotting the shop was found illegal and bad in law. The appeal was allowed and the impugned order passed by the District Supply Officer was set aside by an order dated 15th October, 1996. The petitioner therefore, preferred Revision Application nos. 17 of 1996 and 20 of 1996 before the State Government under the provisions of Gujarat State Fair prise shops Scheme and under the provisions of Gujarat Essential Commodities(Control and Supply Declaration) Order, 1981. A full opportunity was given to the parties for urging their case before the State Government. The State Government, after going through the material on record, in respect of each aspect, came to the conclusion in agreement with the findings of facts recorded by the Collector and the order passed by the Collector was self explanatory and that order was found to be just and legal one. Considering the recommendation of the Taluka and District Civil Supply Advisory Committee, the Collector was justified in passing the order in the capacity of appellate authority in setting aside the order of the District Supply Officer and the Revision Application has been dismissed by an order dated 8th January, 1998. Therefore, being aggrieved by the orders of both the authorities i.e. Collector and the State Government, this petition has been filed by the petitioner.

4. Heard the learned counsel for the parties and perused the relevant papers on record. The contention of the learned counsel for the petitioner is that the proceedings before the Collector and State Government are without jurisdiction and are not maintainable in the eye of law and the orders passed by the authorities are null and void. Though clause 4(3) of the Scheme provides an appeal against disciplinary action, taken against the person who has been authorised to run fair price shop, the contention of the learned counsel for the petitioner is that against cancellation of the authorisation either due to disciplinary action or administrative reason or any other reason, an appeal would lie. But in the present case, the authorisation has already been granted by appropriate authority. No appeal has been provided for cancellation of that authorisation under the Scheme. Clause-11 of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 provides an appeal to any licence holder aggrieved by any order of licensing authority refusing to issue, re-issue or renew a licence or cancelling, suspending licence, forfeiture of security deposit by the licence holder under theprovisions of the Order, may file an appeal within 30 days from the date of

receipt of the order to the appropriate authority mentioned in clause-11. Thus, clause-11 of the Control Order provides an appeal against the licence holder for the breach of any order and not against the person already authorised to run a fair price shop in the scheme which has been framed independently and has no connection with the Control Order. As such, there is no provision for making any appeal against the order passed by the appropriate authority who has authorised the petitioner to run the fair price shop. At the most, the respondent no.2 had a remedy available for a declaration or prohibition by way of filing a civil suit in the Civil Court or a writ petition in this Court under Article 226 of the Constitution, but not by way of an appeal under the provisions of Control Order or the scheme. A contention was raised before the Revisional Authority that the order passed by the Collector alloting the shop in favour of the respondent no.1 was without jurisdiction because as per the rules and regulations of the Government for allotment of a fair price shop, the Collector was a chairman of the said Committee and the decision which was taken by the Committee for alloting a fair price shop to the respondent no.1. As such, he was not empowered to entertain an appeal against the decision taken by himself as chairman of such committee and no such power under the law had been conferred upon him in this respect. In this regard, it is also submitted by the learned counsel for the petitioner that the purpose of the scheme is entirely different from the purpose of the Control Order. The scheme provides to supply foodgrains, sugar, edible oils, clothes at reasonable rates mentioned only for the poor class of people in the tribal area or specified area in the scheme. While, the Control order provides the provisions for regulating business and trade in respect of essential commodities and articles mentioned in the Order itself and under Essential Commodities Act. It is further contended by the learned counsel for the petitioner that the respondent no. 1 is not eligible due to reason that he was involved in a criminal case and he was not an unemployed person within the meaning prescribed in the scheme as he was serving as an agent of small saving scheme. He had also a pan galla cabin, his wife was also working as a primary teacher getting salary of Rs.4000/to Rs.4500/- per month. The authorities have not considered the material produced by the petitioner in respect of the eligibility of the respondent no.1 and the authorities have ignored to consider and the authorities are required to give reasons for accepting or rejecting the material of the parties, but the authorities have not given any reason regarding the material produced by the petitioner

regarding the eligibility of the respondent no.1. Thus, the authorities have committed an error on the face of the record and the decisions taken by the respondent authorities are not sustainable in the eye of law. The authorities have committed an error on the face of the record in holding that the petitioner was not eligible due to age and he was not a resident of the locality as only on the basis of the voters' list.

6. The learned counsel for the petitioner relied on the decision of the Supreme Court in the case of Syed Yakoob Vs. K.S.Radhakrishnan and others reported in AIR 1964, SC, 477 wherein it has been held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction or in excess of it, or as a result of failure to exercise jurisdiction. A writ can, similarly, be issued wherein exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is against the principles of natural justice. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had eroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

7. I have considered the contentions of the learned advocate for the petitioner. So far as the maintainibility of appeal is concerned, whenever any action is taken against any authorised person, running a fair price shop under the scheme, those actions are taken under the provisions of Control Order. As such, an appeal is also provided in the scheme itself as well as in the Control Order. If an appeal is provided against the decision of any authority, it cannot be limited to the wordings enumerated in the provision of appeal made either in the scheme or in the Control Order and clause 4(iii) of the scheme provides an appeal against the disciplinary action against the person who has been authorised to run a fair price shop, meaning thereby, if any person has been refused to be authorised for running any fair price shop, the person concerned will have an opportunity to file an appeal against the authority

concerned under clause 4(iii) of the scheme, while in clause (11) of the Control Order, an appeal is provided against the licence holder aggrieved by an order of the licensing authority refusing to issue, re-issue or renew of licence or cancellation or suspending of a licence or forfeiture of the security deposit by the licence holder under the provisions of the Order. Thus, the person aggrieved by an order of the licencing authority refusing to issue a licence or authorisation to run a fair price shop will be included. As such, on the basis of the provisions contained in clause-11 of the Control Order, clause 4(3) of the scheme, it cannot be said that the Collector has no power to entertain and decide the appeal filed against the competent authority which has refused to authorise him for running a fair price shop. If a statute provides for an appeal, the person concerned cannot file a civil suit and cannot approach this Court to invoke the extraordinary jurisdiction under Articles 226 and 227 of the Constitution. Clause 12 also provides revisional jurisdiction to be exercised by the State Government and the State Government has been authorised to call for and examine any proceedings of licensing authority or Collector, or Food and Civil Supply Controller, Ahmedabad as the case may be, for the purpose of satisfying itself as to the legality or propriety of any order passed in such proceedings or as to the legality of such proceedings and if it appears to the State Government that such order or proceedings should be modified, nullified or reversed, it can do. The State Government has been empowered to pass appropriate orders after giving an opportunity of representing the case before the State Government. As the Control Order itself provides the provisions of an appeal and revision before an appropriate authority, it cannot be said that the Collector and the State Government having no jurisdiction in entertaining the appeal and revision respectively were without jurisdictioin and orders passed were null and void.

8. So far as the contention regarding jurisdiction is concerned, even the Collector was the Chairman of the District Committee and the name of the respondent was recommended by the District Committee and the name of the respondent no.1 was recommended by the District level committee and the Collector was the chairman of that committee. The Collector has supervisory jurisdiction and to pass appropriate orders if an appeal is filed and relevant facts are placed before him, the Collector would be justified in exercising his jurisdiction as an appellate authority. Moreover, the decision of the Collector has also been

considered in the Revision Application filed by the petitioner himself.

9. So far as the eligibility of the respondent no.1 is concerned, the State Government has taken a note of the fact that the respondent no.1 was involved in a criminal case and he was serving as a small saving scheme agent. He was also holding a pan galla shop and his wife was working as a primary teacher getting salary of Rs.4000/- to Rs.4500/-. The authorities have taken into consideration facts though a specific finding has not been recorded by the authorities for rejecting or appreciating the material on record, but the fact regarding eligibility of the respondent no. 1 was before the authorities and they have considered on the basis of the material on record. This Court in writ jurisdiction is not expcted to re-evaluate or reassess the evidence of material on record. Both the authorities have recorded a finding that the petitioner was not eligible and not resident of locality. The revisional authority i.e. the State Government has considered the recommendation of Taluka Level and District level committes and has come to the conclusion that the District Authority was having sufficient time for giving a communication to the petitioner with the respondent no.1 in accordance with the recommendation of the committee. On scrutiny of the case, it was found that there was no reason for ignoring and overlooking the recommendations made by Taluka level committee and the District Supply Committee. The said authority was in agreement with the findings of facts recorded by the District Collector and the Revision Application filed by the petitioner was dismissed by the said authority.

10. I do not find any substance in the contention of the learned advocate for the petitioner that only the District Supply Officer has power to consider the recommendation of the Taluka and District Level Committees and to grant authorisation to run the fair price shop as per the guidelines issued by the Government and the Collector and the State Government have no powers to exercise the powers of appellate authority and revisional powers respectively for examination and consideration of facts of the case and material on record. The petitioner has claimed on the basis of the scheme provided by the State Government. It is not under any statutory provisions. Hence, no vested right can be claimed by the petitioner that he should be granted the authorisation that has been cancelled.

11. I have also gone through the orders

passed by the authorities. The authorities have exhaustively considered the materials on record. This court, therefore, does not think it proper to re-appreciate the findings of facts arrived at by the authorities and calling for the interference in the impugned orders in exercise of its extraordinary jurisdiction undr Articles 226 and 227 of the Constitution only on the ground that the Collector being a chairman of the District Level committee had exercised appellate jurisdiction as the State Government has already considered this aspect. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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